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FACT SHEET

EDUCATION

Background

The U.S. Congress may complete work on two key education laws in 2010: the Elementary and Secondary Education Act (known as No Child Left Behind) and the Preventing Harmful Restraint and Seclusion in Schools Act. Both pieces of legislation impact the education of students with disabilities.

The Elementary and Secondary Education Act (ESEA), called “No Child Left Behind” in its last reauthorization, requires that all students be assessed to determine educational progress by individual schools and school systems. The disability community continues to support ESEA because the law requires the inclusion of all students with disabilities in the student achievement system. ESEA’s authority expired in September 2007, and Congress is expected to begin work on reauthorization this year. There has been much controversy about how to measure educational progress for students with disabilities, a population that is frequently blamed by educators for their schools’ poor test scores. The Bush Administration adopted two regulations aimed exclusively at certain students with disabilities. The first rule allows up to 1% of all students (10% of special education students) with significant cognitive impairments to be assessed using alternate assessments based on alternate standards. The other rule, not yet fully implemented, allows for assessments based on modified achievement standards aligned to the general curriculum for those students with disabilities (up to 20%) who can make progress toward, but may not reach, grade-level achievement standards in the same time frame as other students. The U.S. Department of Education has also allowed the states to employ so-called “growth models” to assess student performance (growth models seek to measure a student’s progress within a certain timeframe).

The Preventing Harmful Restraint and Seclusion in Schools Act is pending legislation that would establish federal minimum standards limiting the use of restraint and seclusion in schools. Research and recent reports show that restraint and seclusion in education are often unregulated and used disproportionately on children with disabilities, frequently resulting in injury, trauma, and even death. In January 2009, the National Disability Rights Network issued a report detailing the harmful use of these interventions in over two-thirds of the states, involving children as young as three years old in both public and private school settings. Following that report, the Government Accountability Office (GAO) conducted an investigation finding no federal laws restricting the use of these interventions in schools, and that state laws vary widely if they exist at all. Restraint and seclusion are often used for behaviors that do not pose danger or threat of harm, and are implemented by untrained school personnel. Numerous alternatives to restraint and seclusion exist, including positive behavioral interventions and supports and other methods for preventing and stopping problem behaviors.

Action Taken by Congress and the Administration

Congress has begun the work of reauthorizing ESEA by holding hearings on the topic, but House and Senate leaders have yet to introduce bills to begin the reauthorization process. The Obama Administration released its blueprint for ESEA reauthorization in March. The blueprint provides incentives for states to adopt academic standards that prepare students to succeed in college and the workplace and create accountability systems that measure student growth toward meeting the goal that all children graduate and succeed in college. Although the Administration acknowledges that the primary funding for programs that support students with disabilities is through the Individuals with Disabilities Education Act (IDEA), it promises that its proposal will “increase support for the inclusion and improved outcomes of students with disabilities”.

On December 9, 2009, Representatives George Miller (D-CA) and Cathy McMorris-Rodgers (R-WA) introduced H.R. 4247, the Preventing Harmful Restraint and Seclusion in Schools Act. On the same day, Senator Christopher Dodd (D-CT) introduced S. 2860, a companion bill by the same name. On March 3, 2010, the House passed H.R. 4247, renamed the “Keeping All Students Safe Act”, by a bipartisan vote of 262 to 153. Both the Senate bill and the House-passed bill have been referred to the Senate Committee on Health, Education, Labor and Pensions and are awaiting further consideration.

The House and Senate versions of the bill are very similar. They establish federal minimum safety standards to limit the use of restraint and seclusion in public and private early childhood, elementary and secondary schools that receive any form of support from federal education funds, as well as Head Start programs. The bills ban the use of mechanical and chemical restraints, physical restraints that restrict breathing and aversive interventions that compromise health and safety.

The bills limit the use of physical restraint and seclusion to circumstances when a student’s behavior poses an imminent danger of physical injury and less restrictive interventions would be ineffective, and require the cessation of the intervention when the danger has ended. School personnel who implement physical restraint and seclusion must be trained and certified, and must continuously monitor students during interventions.

The bills prohibit physical restraint and seclusion being written as planned interventions in individual student education documents, but allow for classroom and school crisis plans. Schools are required to establish procedures to be followed after restraint or seclusion are used, including parental notification. The Senate bill requires the school to have a debriefing session with the student’s parents to discuss the incident.

The bills give each state two years to provide assurances that they have policies and procedures in effect that meet or exceed the minimum standards, as well as mechanisms to monitor and enforce the standards. States are also required to report the number of restraint and seclusion incidents in the state on an annual basis. The bills also provide for a discretionary grant program to assist states, districts and schools to establish, implement and enforce state standards, support data collection and analysis, support staff training, and improve school climate and culture through the implementation of school-wide positive behavior supports.

Recommendations

The 111th Congress should:

Restraint and Seclusion legislation:

- Pass the Senate bill and ultimately and pass a final bill that establishes federal minimum safety standards for the use of restraint and seclusion in schools;
- Ensure that a final bill includes the prohibition of restraint and seclusion in a student’s Individual Education Plan (IEP) and other individual education documents;
- Include in a final bill the Senate bill’s requirement that schools hold a debriefing session with parents after restraint or seclusion has been used.

Elementary and Secondary Education Act (ESEA):

- Ensure that any changes to ESEA do not negatively impact students with disabilities, such as using the student’s IEP for purposes of assessing adequate yearly progress;
- Require closer coordination of ESEA and IDEA policies;
- Substantially increase authorized funding for teacher preparation in the ESEA.

Relevant Committees

House Education and Labor Committee

Senate Health, Education, Labor and Pensions (HELP) Committee

For more information, please contact The Arc and United Cerebral Palsy Disability Policy Collaboration (202) 783-2229, Association of University Centers on Disability (301) 588-8252, American Association on Intellectual and Developmental Disabilities (202) 387-1968, National Association of Councils on Developmental Disabilities (202) 506-5813 or the Self Advocates Becoming Empowered (802) 760-8856.

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